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No. 82-1724

In The  
**Supreme Court of the United States**  
OCTOBER TERM, 1983

STATE OF NEW YORK,

*Petitioner,*

vs.

ROBERT UPLINGER and SUSAN BUTLER,

*Respondents.*

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**ON WRIT OF CERTIORARI TO THE  
NEW YORK STATE COURT OF APPEALS**

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**PETITIONER'S OBJECTION TO MOTION OF  
NATIONAL ASSOCIATION OF BUSINESS COUN-  
CILS ET AL. TO FILE BRIEF *AMICI CURIAE***

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Petitioner State of New York hereby respectfully files its objection, pursuant to Supreme Court Rule 36.3, to the motion made by the National Association of Business Councils, the Federation of Parents and Friends of Lesbians and Gays, Lesbian and Gay Interfaith Alliance, National Gay Rights Advocates, Lawyers for Human Rights, Midge Costanza, Evelyn Hooker, Ph.D., Wardell B. Pomeroy, Ph.D., Joseph LoPiccolo, Ph.D., Bruce Voeller, Ph.D., Alvin F. Poussaint, M.D., Margaret Lawrence, M.D., Sol Gordon, David McWhirter, M.D., and Michael Carrera, Ph.D. for leave to file a brief *amici curiae*. The motion and brief *amici curiae* were received by petitioner on December 20, 1983. Consent to file a brief as *amici curiae* had been requested of petitioner but refused on the ground that *amici* had no concrete, substantial interest in the decision of the case.

Petitioner respectfully requests that the Court deny the motion for leave to file the brief *amici curiae* because the above-named organizations and individuals have no legitimate interest in the instant case as demonstrated by the content of their proposed brief *amici curiae*. The interests which they advance are right to travel interstate, promotion of the family, and separation of the church and state. In support of these interests, they urge that a review of the issue decided in *People v. Onofre*, 51 NY2d 476, 434 NYS2d 947, 415 NE2d 936 (1980), *cert. denied*, 451 US 987 (1981), would be inappropriate.

Clearly, the entire premise of the instant *amici curiae* brief is that certiorari was improvidently granted by this Court which should not review at this time the legality of private, non-commercial consensual sodomy. Since the issue before this Court, as set forth in petitioner's brief, concerns the constitutionality of New York Penal Law §240.35(3) and not the correctness of the New York Court of Appeals ruling in *Onofre, supra*, the *amici curiae* brief proffered by the above-listed organizations and individuals is wholly irrelevant and uninformative. Indeed, the instant *amici curiae* brief will not assist the Court in any way and thus should not become a part of the materials to be considered in this case.

For all the foregoing reasons, petitioner respectfully requests this Court to deny the motion of the National Association of Business Councils *et al.* for leave to file a brief *amici curiae*.

Respectfully submitted,

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